

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
03/20/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0994-R-2024
Stern, Anika
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Hathaway Judith Basin Family Ltd Partnership

CASE 41S-0994-R-2024

41S 134258-00

41S 134260-00

41S 134273-00

41S 134274-00

41S 134280-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Hathaway Judith Basin Family Ltd Partnership (Claimant) is the record owner of claims 41S 134258-00, 41S 134260-00, 41S 134273-00, 41S 134274-00, and 41S 134280-00.

2. Claims 41S 134258-00, 41S 134260-00, 41S 134273-00, 41S 134274-00, and 41S 134280-00 were decreed with DNRC issue remarks:

41S 134258-00:

- USDA AERIAL PHOTOGRAPH NO(S). 30045-279-80, DATED 09/18/1979, APPEARS TO INDICATE 73.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41S 134260-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 70.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-279-82, DATED 09/18/1979, APPEARS TO INDICATE 37.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41S 134273-00:

- DIVERSION MEANS WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41S 134274-00:

- SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41S 134280-00:

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE JUDITH BASIN COUNTY WATER RESOURCES SURVEY (1963) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30045-179-110, DATED 09/17/1979, APPEARS TO INDICATE 3.60 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

3. The Claimant was ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.¹1.00).

4. DNRC Water Resources Specialist Brandon Ahlgren filed a Memorandum on February 4, 2025. (Doc. 3.00). Mr. Ahlgren reported that “representatives of Hathaway Judith Basin Family Ltd Partnership” met with him on January 27, 2025. Mr. Ahlgren

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

stated he reviewed the Judith County Water Resource Survey and aerial photos to prepare the Memorandum.

5. **41S 134258-00:** Mr. Ahlgren indicated “During this investigation the DNRC was unable to substantiate any more acreage than what was identified during the initial examination.” Mr. Ahlgren recommended the place of use and maximum acres be modified to 73.00 acres:

Maximum Acres:	00.00	73.00					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	73.00	00.00	NE	3	17N	13E	JUDITH BASIN
Total:	00.00	73.00					

6. **41S 134260-00:** Mr. Ahlgren explained that 70.00 acres was originally claimed, and the place of use was reduced to 59.00 acres during verification. Mr. Ahlgren stated that he confirmed the originally claimed 70.00 acres and recommended the claim be modified as follows:

Maximum Acres:	60.00	70.00					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	45.00	24.00	SE	9	17N	13E	JUDITH BASIN
2	25.00	28.00	S2NE	9	17N	13E	JUDITH BASIN
Total:	60.00	70.00					

7. **41S 134280-00:** Mr. Ahlgren confirmed the 1.00 acre of domestic use decreed and recommended the issue remarks be removed from claim 41S 134280-00 with no modifications to the claim.

8. An Order was issued to determine if Claimant Hathaway Judith Basin Family Ltd Partnership agreed or disagreed with the recommendations made by Mr. Ahlgren. (Doc. 4.00). The Order indicated that if nothing were filed by the March 7, 2025 deadline, this Water Master would conclude the Claimant agreed with the recommended modifications. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim.
Section 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.
3. The notice-type issue remarks decreed on claims 41S 134258-00-00, 41S 134260-00, 41S 134273-00, and 41S 134274-00 have served their notice purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41S 134258-00 should be modified as follows:

Maximum Acres: 00.00 73.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	73.00 00.00		NE	3	17N	13E	JUDITH BASIN
Total:	00.00 73.00						

- Claim 41S 134260-00 should be modified as follows:

Maximum Acres:		60.00	70.00						
Place of Use:									
<u>ID</u>		<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1	45.00	34.00		SE	9	17N	13E	JUDITH BASIN	
2	25.00	28.00		S2NE	9	17N	13E	JUDITH BASIN	
Total:		60.00	70.00						

2. The issue remarks should be removed from claims 41S 134258-00, 41S 134260-00, 41S 134273-00, 41S 134274-00, and 41S 134280-00.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Hathaway Judith Basin Family Ltd Partnership
4334 Ployhar Rd
Denton, MT 59430

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 134258-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
4334 PLOYHAR RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1920

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

*Flow Rate: NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

Volume: 180.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 73.00

Source Name: COYOTE CREEK

Source Type: SURFACE WATER

*Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSWNE	3	17N	13E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	NATURAL OVERFLOW					
2		NWNWSE	3	17N	13E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	NATURAL OVERFLOW					

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	73.00		NE	3	17N	13E	JUDITH BASIN
Total:	73.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 134260-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
4334 PLOYHAR RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1920

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

Volume: 118.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 70.00

Source Name: COYOTE CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSE	9	17N	13E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	NATURAL OVERFLOW					
2		SWNWSE	9	17N	13E	JUDITH BASIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	NATURAL OVERFLOW					
Period of Use:	JANUARY 1 TO DECEMBER 31					

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	45.00		SE	9	17N	13E	JUDITH BASIN
2	25.00		S2NE	9	17N	13E	JUDITH BASIN
Total:	70.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

134260-00 134274-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 134273-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
4334 PLOYHAR RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1954

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF COYOTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	10	17N	13E	JUDITH BASIN

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSW	10	17N	13E	JUDITH BASIN

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSW	10	17N	13E	JUDITH BASIN

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number:41S 134274-00 STATEMENT OF CLAIM

Version:3 -- POST DECREE

Status:ACTIVE

Owners:HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
4334 PLOYHAR RD
DENTON, MT 59430

Priority Date:DECEMBER 31, 1920

Type of Historical Right:USE

Purpose (Use):STOCK

*Flow Rate:A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

*Volume:THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

*Source Name:COYOTE CREEK

Source Type:SURFACE WATER

*Source Name:UNNAMED TRIBUTARY OF COYOTE CREEK

Source Type:SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		SE	9	17N	13E	JUDITH BASIN
*Source Name:UNNAMED TRIBUTARY OF COYOTE CREEK						
Period of Diversion:JANUARY 1 TO DECEMBER 31						
Diversion Means:LIVESTOCK DIRECT FROM SOURCE						
2		S2NE	9	17N	13E	JUDITH BASIN
Source Name:COYOTE CREEK						
Period of Diversion:JANUARY 1 TO DECEMBER 31						
Diversion Means:LIVESTOCK DIRECT FROM SOURCE						

Period of Use:JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1			SE	9	17N	13E	JUDITH BASIN
2			S2NE	9	17N	13E	JUDITH BASIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

134260-00

134274-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 134280-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HATHAWAY JUDITH BASIN FAMILY LTD PARTNERSHIP
4334 PLOYHAR RD
DENTON, MT 59430

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 3.00 AC-FT

Households: 2

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENE	15	17N	13E	JUDITH BASIN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: WELL						
Period of Use: JANUARY 1 TO DECEMBER 31						
Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		NESENE	15	17N	13E	JUDITH BASIN
Total:	1.00						